IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1746 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIJAYKUMAR SAMJI PALAN - Petitioner(s)
Versus
ANJAR AREA DEVELOPMENT AUTHORITY & 1 - Respondent(s)

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Appearance :
MR HARIN P RAVAL for Petitioner(s) : 1,
MR NIKHILESH J SHAH for Respondent(s) : 1,
MR DIPEN DESAI ASST GOVERNMENT PLEADER for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/06/2006

ORAL JUDGMENT

1. By way of this petition under Article-226 of the Constitution of India, the petitioner has challenged the legality and validity of the

notice dated 30.1.2003 issued under Section-68 of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as the “Act” for short) read with Rule-33 of the Rules directing the petitioner to hand over the possession of the plot which is required to be handed over on finalization of the Town Planning Scheme. It is also further prayed to quash and set aside the decision of the respondent No.2 – Town Planning Officer, Anjar Area Development Authority (hereinafter referred to as the “AADA” for short) in laying down 6 meters wide road to the south of reconstituted Final Plot No.42 in so far as it deducts and reduces the area of City Survey No.1730 and 1734 which is now given original plot No.42 and reconstituted as Final Plot No.42.

2. The petitioner was the owner of the land bearing City Survey No.1734 situated at Anjar, District Kachchh which was required to be used as

Go-down only. That due to vast destruction of human life and property in the area due to devastating earthquake on 26th January, 2001, due to which, thousands of people were buried under the debris of buildings and of narrow streets, the State Government decided to constitute the special planning for the whole area of Anjar under the Act. That pursuant to the Government notification dated 9.5.2001, Area Development Authority known as “AADA” was constituted. A declaration for intention to prepare Town Planning Scheme No.124 was declared by the AADA vide Resolution dated 3.5.2002 as required under Section-41(8) of the Act and the same was published in the Gujarat Government Extra Ordinary Gazette dated 4.5.2002 as required under Rule-60(1) of the Rules. That said declaration / intention was also published in local newspapers. Individual notices as well as public notices were given for owners' meeting and the owners' meeting was held on 23.5.2002. A draft Town Planning

Scheme was published in the newspaper and the suggestions and objections were invited from the land owners. That draft scheme was made by the AADA by Resolution dated 14.6.2002 and the same was also published in the Government Gazette. That thereafter suggestions and objections were invited. It is the case on behalf of the petitioner that he also submitted objections and considering the same, draft Town Planning Scheme came to be sanctioned and/or modified and as required under Section-48(1) the Draft Town Planning Scheme was submitted along with modifications and objections received by the AADA to the Government for sanction and the said Draft Town Planning Scheme came to be sanctioned by the State Government vide Notification dated 17.7.2002. Thereafter, Town Planning Officer was appointed to finalize sanctioned draft town planning scheme, prepared and submit a preliminary Town Planning Scheme and thereafter Town Planning Officer submitted a Preliminary

Town Planning Scheme after inviting suggestions and objections and the same was sent to the State Government and that the Government accorded its sanction to the Preliminary Town Planning Scheme vide notification dated 21.1.2003 and thus, the Town Planning Scheme came into force with effect from 21.1.2003. That under the Town Planning Scheme which is sanctioned and has become final the petitioner is allotted Final Plot No.42 against the City Survey No.1734 OP No.42 after deducting the land required for laying down 6 meters wide road to the south of the reconstituted F.P.No.42. Thereafter, for the purpose of implementation of the Town Planning Scheme and for the purpose of laying down of 6 meters wide road, the land was required from O.P.No.42 and the petitioner was required to hand over possession of the said land which was going under 6 meters wide road and therefore, the petitioner was served with the impugned notice dated 30.1.2003 under Section-68 read with Rule-

33 of the Rules and at that stage, the petitioner has preferred the present special civil application.

3. Shri R.M.Chhaya, learned advocate appearing on behalf of the petitioner has vehemently submitted that the land which is coming under 6 meters wide road, there exists 4 shops constructed by the petitioner in accordance with law with the approved plans prior to coming into force the preliminary scheme No.1 and therefore, if the respondents implement the Town Planning Scheme No.1 so as to have 6 meters wide road to the south of the land of the petitioner which was bearing City Survey No.1734 which is reconstituted as Final Plot No.42, the said shops will be affected. It is further submitted that if the respondents insist for having 6 meters wide road then appropriate directions are required to be issued to the respondents to realign 6 meters wide road in such a way so that deduction can be

made from City Survey No.1753 which is reconstituted as Final Plot No.61. It is also further submitted that considering the dimension of Final Plot No.61 and considering the fact that the existing building is categorized as “G-5” and major portion of it has collapsed, no irreparable loss, harm or injury will be caused if slight realignment of 6 meters wide road is made. It is further submitted that similarly in the land of F.P.No.49 the building has totally collapsed and it is open land and therefore no irreparable loss or injury is likely to be caused if there is slight realignment. It is therefore submitted that if some realignment is made and the land needed for 6 meters wide is taken from the other side of their shops, no prejudice will be caused and the shops of the petitioners can be saved and hence, it is requested to grant reliefs as prayed for.

4. The petition is opposed by the Anjar Area

Development Authority as well as the State Government. It has been submitted that once the Town Planning Scheme has become final, it has become part of the Act and therefore, the same cannot be challenged. It is submitted that some portion of the property owned by the petitioner i.e. City Survey No.1734 is required for 6 meters wide road under the finalized Town Planning Scheme and the draft scheme as well as the preliminary scheme came to be sanctioned after considering the objections submitted by the petitioner. It is submitted that once the Town Planning Scheme has become final and the land as per reconstitution vests in the Area Development Authority. It is also further submitted that once the Town Planning Scheme has become final, necessary consequences as per Section-68 of the Act read with Rule-33 of the Rules, are bound to follow and the petitioner is required to hand over possession of the land which is required for the purpose of 6 meters wide road. It is also

submitted that inspite of the fact that the petitioner was granted permission for godown, he has illegally constructed shops. It is also further submitted that once the Town Planning Scheme has become final, the petitioner is required to hand over possession considering Section-68 of the Act and the Town Planning Scheme is required to be implemented. It is also further submitted that `whether 6 meters wide road is required' or `5 meters wide road is required', needs to be considered by the Town Planning Authority and the Expert Body. It is also submitted that in view of the fact that due to narrow roads in the earthquake the people have suffered a lot. It is also further submitted that the authority is required to consider the entire alignment of 6 meters road and is not required to consider only position of the property on the other side of the petitioner's property. It is submitted that a conscious decision has been taken considering the objections submitted by the

petitioner and the Town Planning Scheme has become final and therefore, prayer of the petitioner to re-align 6 meters road is not required to be granted. It is also further submitted that considering the further alignment, it was found that there are other existing residential buildings which are likely to be affected and therefore, it is in the best interest and considering the fact that less damage is caused to the existing building, the present 6 meters wide road is provided and therefore, it is requested to dismiss the present special civil application.

5. It is also further submitted that once the Town Planning Scheme has become final after complying with the provisions of the Act and Rules and notices have been issued under Section-68 of the Act read with Rule-33 of the Rules and therefore, prayer of the petitioner not to implement the notice which is basically for

implementation of the Town Planning Scheme, is not required to be granted.

6. The learned advocates appearing on behalf of the respondents have relied upon the Full Bench decision of this court in the case of **Saiyed Mohammed Abdullamiya Uraizee (since deceased by his successor) V. Ahmedabad Municipal Corporation and others** reported in 1977 GLR 549, in the case of **Dungarlal Harichand V. State of Gujarat and others** reported in 1976 GLR 1152 and the decision of the Devision Bench of this Court in case of **Kashiben W/o Pitamber Devchand and another V. State of Gujarat and another** reported in 1989(2) GLR 1176. Relying upon the aforesaid decisions, the learned advocates appearing on behalf of the respondents have submitted that on finalization of the Town Planning Scheme, the land absolutely vests in the Area Development Authority and all rights of these persons occupying the same have come to an end and the eviction power would be

merely an administrative power of eviction. It is also further submitted that as held by this Court in the aforesaid decisions, once the land vests with the authority concerned, as per the scheme, the scheme has become a legislative measure and therefore, the occupier could never invoke any prejudice or consideration of the principle of fair play and justice. Therefore, it is requested to dismiss the present Special Civil Application.

7. While relying upon the judgment of this Court in case of KANJIBHAI DAHYABHAI MALSATTAR AND OTHERS V. STATE OF GUJARAT AND OTHERS, 2005 (2) GLR 1649, it is requested to dismiss the present special civil application as on finalization of the Town Planning Scheme, all lands vest in Area Development Authority free from all encumbrance. He has also relied upon decision of this Court in case of JETHABHAI MEPABHAI MAKWANA V. STATE OF GUJARAT, 2004 (3) GLH 675, it is submitted that as held by this Court when there is conflict

between the private interest and public interest, the private interest has to give way to the public interest. It is submitted that in the present case, the land / property is needed for the purpose of 6 meters wide road which is public purpose and therefore, it is requested to dismiss the present special civil application.

8. Heard the learned advocates appearing on behalf of the parties.

9. It is not in dispute that the Town Planning Scheme No.1 – Anjar has become final after following due procedures as required under the Act. The property in question of the petitioner is likely to be affected and / or needed for the purpose of widening of the road i.e. 6 meters wide road. It is required to be noted that the Town Planing Scheme was required to be made after devastating earthquake on 26.1.2001, in which, there was vast destruction of human life and

property in the area and due to said devastating earthquake on 26.1.2001, thousands of people got buried under the debris of the building and of narrow streets. At the relevant time when the rescue operations were going on, the Government as well as NGOs found difficulties due to narrow streets and the Government machinery could not reach through streets to work in the city and start rescue operations in time and as result whereof many people lost their life. Earlier there was 5 meters wide road and under the finalized Town Planning Scheme, now there will be 6 meters wide road. Now considering the above, if the Expert Body and the State Government and the Authority thought it fit to have 6 meters wide road, the petitioner cannot make a grievance and/or make submission that there is no need for 6 meters wide road and/or 5 meters wide road would be sufficient. This Court in exercise of the powers under Article-226 of the Constitution of India, is not required to consider the wisdom

of the Expert Body. Therefore, the contention on behalf of the petitioner that there is no need of 6 meters wide road, cannot be accepted.

10. It is also further submitted on behalf of the petitioner that for the purpose of widening of the road and to have 6 meters wide road, some portion of the properties / shops of the petitioner are required to be demolished and the said construction was carried out after obtaining necessary permission. Firstly, it is required to be noted and as so stated in the affidavit-in-reply which is not controverted, the permission was granted for godown and the petitioner has constructed the shops illegally and / or dehors the sanctioned plan. Merely because for the purpose of widening of the road, the petitioners' shops are likely to be demolished on that ground alone the scheme will not become defective. For the purpose of implementation of the Town Planning Scheme and in the present case for

widening of the road, somebody's property is likely to be affected and for that a person whose property is likely to be affected and/or demolished is entitled to the compensation under the Act. Identical question came to be considered by this Court in case of KANJIBHAI DAHYABHAI MALSATTAR AND OTHER (Supra) wherein the property was likely to be affected for the purpose of 6 meters wide road and relying upon the judgment of this Court in case of JETHABHAI MEPABHAI MAKWANA V. STATE OF GUJARAT (Supra), this Court held that when there is conflict between the public interest and the private interest, the private interest has to give way to the public interest. It is also held by this Court that considering the object and purpose of the Town Planning Scheme and to have 6 meters in planned manner if super-structure is required to be demolished, then even considering the public interest compared to the private interest, the public interest is required to be given priority and

more waitage than private interest.

11. It is the contention on behalf of the petitioner that no personal hearing was given and/or personal notice was served upon the petitioner. At this stage, the judgment of this Court in case of CHANDRAVADAN CHUNILAL SHAH, 2002 (3) GLR 1849 is required to be referred to wherein this Court relying upon the unreported decision of the Division Bench of this Court rendered in Special Civil Application No.1608 of 1979 dated 20.4.1982 has held that considering the provisions of Section-52 of the Act read with Rule-26, what is required under Section-52 of the Act is giving of a notice to the person affected by the Scheme in the form and manner prescribed and the form and the manner for giving notice under Section.52 of the Act is provided in Rule-26 of the Rules of 1979 and Rule-26 of the Rules provides that the notice shall be published in the Official Gazette and in one or more Gujarati

newspapers circulating within the area of the appropriate authority and shall be pasted in a prominent places at or near the area comprised in the scheme and at the office of the Town Planning Officer. Considering the aforesaid provisions, it is held that serving a special or individual notice upon the person affected by the Town Planning Scheme, the Scheme is not vitiated. One another thing which is required to be noted that the petitioner did submit objections and the same came to be considered at the time of sanctioning of the scheme. Notice is required so that a person can submit his objections. As stated above, the petitioner has submitted his objections and therefore, an inference has to be drawn that sufficient opportunity has been given to the petitioner. Therefore, when a conscious decision has been taken by the appropriate authority to have 6 meters wide road under the Town Planning Scheme due to difficulties faced by the Government authorities and the NGOs as

stated above, it cannot be said that the action of the respondents is illegal and/or 6 meters road is not required and the scheme is vitiated.

12. As held by the Full Bench of this Court in two decisions i.e. Dungarlal Harichand (supra) and Saiyed Mohammed Abdullamiya Uraizee (supra), the Full Bench has observed that once the Town Planning Scheme becomes final, the scheme becomes legislative measure under which the rights of the parties cease and the powers of eviction in such a context would be in the nature of an administrative power and, therefore, when the parties admittedly have no right under the final scheme to continue their occupation, they could never invoke any prejudice or consideration of the principle of fair play and justice so as to have these notice under Section 68 of the Act read with Rule 33 invalidated. It is also further held by the Full Bench in Dungarlal Harichand (supra)that so far as the validity of such

legislative measure is concerned, the validity can be gone into even in writ jurisdiction only to the limited extent whether there is any transgression of jurisdiction of the authorities is concerned, and whether the scheme as finally emerged is totally inconsistent with the Act. It is also further held that it is only the fundamental breaches, i.e., where minimum statutory essentials are not complied with, which result in a total lack of jurisdiction and not other procedural error or defects that would render a scheme, which had become a legislative measure and a part of the Act, liable to attack or challenge in a court on the ground that it is null and void. Thus, considering the two Full Bench decisions of this Court as well as one another Division Bench judgment referred to hereinabove, on finalization of the Town Planning Scheme No.1 which has become part of the Act and whatever the consequences follow for the purpose of implementation of the Town Planning Scheme is

required to be followed. It is required to be noted at this stage that the petitioner has not challenged the Town Planning Scheme No.1 which has become final.

13. Now so far as the challenge to the notice under Section-68 read with Rule-33 of the Rules is concerned, it is required to be noted that the said notice is for the purpose of implementation of the Town Planning Scheme. Once the Town Planning Scheme has become final, all the lands vest with the appropriate authority ad the same is to be implemented as per the reconstituted plots. As such, by said notice, the authority is performing their statutory duties and even it is held by the Division Bench of this Court in case of KASHIBEN WD/O PITAMBER DEVCHAND AND ANOTHER V. STATE OF GUJARAT AND ANOTHER reported in 1989 (2) GLR 1176 that once the final scheme is sanctioned, it must be deemed to be part of the Act and the original owner looses all the rights

over the land and is liable to be evicted and has even no locus standi to file a writ petition.

14. For the reasons stated above, there is no substance in the present petition and the same is required to be dismissed and is accordingly dismissed.

15. Notice is discharged. Ad-interim relief, if any, stands vacated forthwith. However, there shall be no order as to costs.

[M.R.Shah, J.]

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